Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 2001

WALTER BURRIER,

Petitioner,

versus

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

AND

THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CALIFORNIA ATTORNEY GENERAL,

Real Parties in Interest.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

Walter Burrier
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75pgs

QUESTIONS PRESENTED

1. May the state of California regulate how an attorney licensed only in Connecticut practices before a federal immigration court located in the state of California?

2. May the state of California regulate how an attorney licensed only in Connecticut works with non attorney consultants and assistants before federal immigration court and pursuant to that attorney's federal immigration practice?

LIST OF PARTIES

The parties herein:

Walter Burrier.....Petitioner

The Superior Court of the State of California For the County of
Los Angeles.....Respondent

PEOPLE OF THE STATE OF CALIFORNIA, AND THE CALIFORNIA ATTORNEY GENERAL.....Real Parties in Interest

MARK I.ROSE .....Defendant

HUESTON FORTNER.....Defendant

KAREN L. O'DONNELL .....Defendant

PATRICIA M. BOAG .....Defendant

JING RUGGLES .....Defendant

PETER A. NELSON .....Defendant

ASIAN PACIFIC LEGAL SERVICES
.....Defendant

WALTER WENKO .....Defendant

MIAO HUANG .....Defendant

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

OPINIONS BELOW

The opinion sought to be reviewed is that of the Supreme Court of California in *Burrier vs. Los Angeles Superior Court*, 2001 (Court Number S103620) entered February 27, 2002. The

decision of the Supreme Court was not officially reported. The Supreme Court is the highest California appellate court.

The Supreme Court case was an appeal from The California Court of Appeals in *Burrier vs. Los Angeles Superior Court,* 2002 (Court Number No. B155058) entered January 3, 2002. The decision was not officially reported. The California Court of Appeals decision was an appeal of the trial court in *The People of the State of California v. Walter Wenko, et. al.* 2001 (Court Case No. BC 259057) ruling entered on December 4, 2001. The decisions of the Trial Court are not officially reported.

JURISDICTION

This is a case arising under The Immigration and Naturalization Act 8 U.S.C. Section 1158and The Immigration Consultants Act, California Business and Professions Code Sections 22440, et. seq. and California law regulating attorneys and various California laws regulating the practice of business only as applied to assisting immigrants to obtain benefits under United States Immigration law.

A petition for review was filed by the petitioner, January 11, 2002 before The Supreme Court of California.

The jurisdiction of the Supreme Court of the United States is conferred by Rule 10 of the

Supreme Court of the United States of America and 8 U.S.C. section 1329.

Additionally as 28 U.S.C. section 2403 (b) applies the petitioner is serving a copy of this petition on the Attorney General of California.

STATUTES

The statute primary to this case is the Immigration and Naturalization Act, 8 U.S.C. section 1158. California Law regulating non attorneys who assist aliens with immigration benefits is contained in The Immigration Consultants Act, California Business and Professions Code Sections 22440, et. seq.

STATEMENT OF THE CASE

The California Superior court, as upheld by the appellate courts, allowed the California Attorney General to bring a civil suit and maintain a preliminary injunction against an attorney, licensed in Connecticut, but not California, for alleged violations of California law.

The Attorney General claims that the petitioner herein as well as other licensed attorneys assisted non attorney " immigration consultants" with alien client's political asylum claims in violation of California law and assisted those consultants in the unauthorized practice of law. The Attorney General did not make any

claims that the petitioner herein is a non attorney immigration consultant or that is regulated by California law governing non attorney immigration consultants. They claim only that the petitioner assisted others in the unauthorized practice of law and in violating California law.

ARGUMENT

A. Facts

The petitioner is one of several defendants in a California state civil action and injunction request brought by the California Attorney General under a California law regulating non attorney consultants and California state laws concerning fair business practices. The allegations are divided among attorney defendants, which include the petitioner and other non attorney defendants. The Attorney General's civil complaint alleges that the non attorney defendants were assisting immigration clients violating regulations concerning immigration consultants and that the attorney defendants were assisting the non attorney defendants in the alleged violations. The Attorney General does not contend that the attorney defendants, including the petitioner, are regulated as immigration consultants, under California law.

The Attorney General of California also requested a preliminary injunction against all

defendants to stop alleged continuing violations of California law.

The petitioner is authorized to practice before the Immigration Court, Executive Office of Immigration Review under 8 C.F.R. section 1.1(f) and 8 C.F.R. section 292.1(a)(1) and subject to discipline under 8 C.F.R. section 292.3.

The complaint and request for injunction was filed on October 3, 2001. Petitioner, through separate counsel filed a motion to dismiss. The motion to dismiss was based on the following facts:

1) That at all times defendant Burrier was and is an attorney licensed to practice law before all courts in the State of Connecticut. He has never been licensed to practice law in California and has never requested permission to practice law within the state courts of the State of California.
2) Defendant Burrier's practice is strictly limited to federal immigration law. His sole authority to practice before the federal immigration court, is federal law and regulation. He has never received nor requested permission by any California agency including the State Attorney General, nor the California State Bar, nor the California State Legislature nor the California Supreme Court, for permission to practice before the federal immigration

court and to practice immigration law and such permission has never been required.

3) Although the complaint alleged that defendant Burrier is "substitute appearance attorney for Wenko", paragraph 9 of the complaint, and "was at all times mentioned herein agent, representative, or employee of Defendants Wenko and Hunag", paragraph 9 of the complaint, it must be noted that Defendant Burrier is licensed to appear before federal immigration court and needs no special permission by any defendant in this matter. Further, immigration court does not recognize the term " substitute appearance attorney" or any like phrase. Defendant Burrier was and is a licensed attorney authorized to practice immigration law before the immigration court. Further as an immigration attorney, he is a "representative and agent" of all persons he represents, under United States immigration law.
4) The plaintiffs alleged that defendant Burrier assisted the "non- attorney" defendants in the "unauthorized" practice of law, by allowing the "splitting of fees" and the assistance of non attorneys in the handling of legal matters, paragraphs 34 to 38 of the complaint. It should be noted that virtually every law firm in the world uses some non attorney assistance. Further immigration

law specifically allows non attorneys to appear and practice before immigration court.

The matter was heard by the trial court on December 3, 2001. Defendant's counsel specially appeared and argued. The court heard and denied the motion to dismiss on forum non convenience. Immediately after the motion was denied, the court heard argument on the preliminary injunction. Neither Defendant nor his counsel appeared and by law could not appear and neither argued the matter. The plaintiff argued that the defendant had defaulted by failing to provide a defense on the merits and the trial court agreed and issued the preliminary injunction against the defendant, even though no general appearance by the defendant was permitted.

A Writ of Mandate was filed with The California Court of Appeals on December 13, 2001 in Case No. B155058 because pursuant to California law the denial of a motion is not a final judgment. Said Writ was summarily denied on January 3, 2002. A Petition for Review was then filed with The Supreme Court of California on January 11, 2002 in case No. S103620. The Supreme Court of California is the highest appellate court in the State of California. The petition was summarily denied on February 27, 2002. The request for Writ of Certiorari to the

United States Supreme Court is thereby requested herein.

The Supreme Court of California is the highest California State Court and appeal to the United States Supreme Court is appropriate as all lower court relief has been exhausted.

Jurisdictional issues including the federal subject matter jurisdiction were raised in the state trial court by motion and through all stages of appeal.

B. California lacks subject matter jurisdiction over immigration procedure and therefore may not regulate attorneys or non attorney immigration consultants

1) The United States Government has the power to regulate immigration

The authority of Congress and the Federal Government to control immigration and foreign relations comes directly from the United States Constitution. The United States Constitution gives the Congress the power to regulate commerce with foreign nations, to establish uniform rules of naturalization, to provide for the general welfare, and to make all laws necessary and proper to carry out its powers. These specific

powers are found in The United States Constitution Section 8, Clause 1, The United States Constitution Section 8, Clause 3, The United States Constitution Section 8, Clause 4, and The United States Constitution Section 8, Clause 18. The power of the Federal Government in foreign affairs was also upheld in *United States v. Curtiss-Wright Corp.* 299 U.S. 304 (1936).

The United States Congress has the authority to regulate the practice of immigration. A state's power to regulate or restrict the practice of law before a federal court must yield to federal law. The United States Supreme Court in *Sperry v. Florida* 373 U.S. 379 (1963) so held. In Sperry, the petitioner was not an attorney, but practiced before the United States Patent Office located in Florida. The state of Florida obtained an injunction to prevent the petitioner from appearing before the Patent Office, as he was "engaged in the unauthorized practice of law" within the state of Florida.

The court held that Sperry did engage in the unauthorized practice of law as defined by Florida and that Florida's police powers did permit the state to regulate the unauthorized practice of law. Yet, despite the interest of Florida in protecting its citizens the court held that Florida's law must yield to the Federal Government. Citing *Gibbons v. Ogden* 9 Wheat 1,211 the court stated "But 'the law of the State, though enacted in the exercise of powers, not

contraverted, must yield' when incompatible with federal legislation....' *Sperry v. Florida* 373 U.S. 379 (1963).

The court stated clearly that no state could regulate a person granted a right to practice before a federal board. The court cited *Pennsylvania c. Wheeling & Bridge Co.* 13 How. 518, 566

> "The statute thus expressly permits the Commissioner to authorize practice before the Patent Office by nonlawyers, And the Commissioner has explicitly granted such authority. If authorization is unqualified, then by virtue of the Supremacy Clause, Florida may not deny to those failing to meet its own qualifications the right to perform the functions within the scope of the federal authority. A State may not enforce licensing requirements which, though valid in the absence of federal regulation, give 'the State's licensing board a virtual power of review over the federal determination' that a person or agency is qualified and entitled to perform certain functions

> or which impose upon the performance of activity sanctioned by federal license additional conditions not contemplated by Congress"

Sperry v. Florida 373 U.S. 379 (1963).

2) The states are pre-empted from regulating immigration legal practice

Once it has been determined that Congress has the power to regulate Immigration and Naturalization and that the police power of the State must yield to Congress, it must be determined whether or not Congress did in fact intend to pre-empt State law and prohibit malpractice actions, with regard to immigration, within state court. A leading case on pre-emption is *Medtronic v. Lohr* 518 US 470, 64 U.S.L.W. 4625 (1996). The United States Supreme Court held that for pre-emption to apply, the federal statute's language must show a "clear and manifest" purpose to pre-empt. The specific state action must threaten to interfere with a specific federal interest.

The United States Supreme Court has also decided a pre-emption case in which a common law tort action not specifically mentioned in federal law was pre-empted by the legislative

scheme. In *Cipollone v Liggett Group* 505 U.S. 504 (1992) the plaintiff brought a tort action against cigarette manufacturers, claiming they failed to warn him about the hazards of smoking. The defendant manufacturers claimed that any action under a state tort action was pre-empted by the federal labeling requirements. The court determined that the federal language that "No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising ...of cigarettes ... of which are lawfully labeled.", pre-empted the State court tort actions.

Viewing the law as applied to the facts herein, the Congress has passed significant legislation and regulation concerning immigration and the practice within the immigration court. Pursuant to federal regulations the federal government has set up a specific statutory scheme concerning exactly who may appear as a representative of another before the Executive Office for Immigration Review. 8 C.F.R. section 1.1(f) permits attorneys to appear regardless if they are licensed in the state where the court is located. 8 C.F.R. section 292.1(a)(2)-(5) provides for law students, reputable individuals, accredited representatives and accredited officials to appear. These individuals are all nonattorneys. If the federal law permits and regulates appearances, then common law actions or state actions against attorneys or non attorneys, or attorneys assisting

non attorneys must also be pre-empted by law and any state action must be prohibited and The Immigration Consultants Act, California Business and Professions Code Sections 22440, et. seq is therefore unconstitutional as in conflict with federal law.

C. United States Law bans any civil action or any other private actions against any person for filing or assisting in the filing for political asylum, including those actions by a state attorney general

Under Federal law 8 U.S.C. section 1158 (d)(7) no private action is permitted or created by the political asylum statute. This statute is in direct conflict with The Immigration Consultants Act, California Business and Professions Code Sections 22440, et. seq.The act is therefore unconstitutional.

D. California lacks personal jurisdiction over the petitioner

The United States Supreme Court has held that for personal state jurisdiction to apply a party must have "minimum contacts" with the forum state "such that the maintenance of the

suit does not offend `traditional notions of fair play and substantial justice". The court made this holding in *Shaffer v. Heitner* 433 US 186 (1977)applying *International Shoe Co. v. Washington*, 326 US 310 (1945). The court held that mere presence in the forum state is not enough.

In this case the petitioner has little else then physical presence in the forum state. The petitioner is a Connecticut attorney and has no license to practice law in California courts. His practice is strictly limited to immigration law in several states with an office in California. Nothing the petitioner has done avails him of any benefit in California and California has no interest in regulating his practice in courts which involve no California law or citizen. Even under California law, foreign attorneys are to be sued within their home state under their home state standard, *Credit Lyonais Bank Nederland v. F.L. Amhurst* 202 Cal. App. 3d. 1424, 249 Cal.Rptr. 559 (Cal.App.2 Dist. 1988).

There being no personal nor subject matter jurisdiction within the California courts, the petitioner requests that this court grant Certiorari and dismiss the action pending within the California State court.

CONCLUSION

There being neither subject matter nor personal jurisdiction against the defendant petitioner in California, this court should grant the writ and dismiss the California action pursuant to law.

REASONS FOR GRANTING THE WRIT

This case should be reviewed because it will prevent a California Court from exceeding its jurisdiction into United States Immigration Law. It will avoid the unnecessary expense and judicial waste of resources by ending an improper grant of judicial power over matters never entrusted to a state of the United States. The California action is an attempt by the attorney general and the state of California to override federal law. Further it is an attempt to discipline, via California Courts, an attorney who has never been licensed nor appeared in California Courts.

Dated this 14th Day of May, 2002

Walter Burrier
In Pro Per